IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 21ST NOVEMBER 2006 / 30TH KARTHIKA 1928

Crl.MC.No. 3547 of 2006()

CC.222/2004 of JUDL. MAGISTRATE OF FIRST CLASS-II, HOSDRUG

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PETITIONER: ACCUSED IN CC.222/2004:

K.P. RASAK, S/O. BEERANKUTTY,
P.O. PILATHARA, VIA. MANDUR, KANNUR DIST.

BY ADV. SRI.KALEESWARAM RAJ

RESPONDENTS:

STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.A.AKBAR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 21/11/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.3547 of 2006

Dated this the 21st day of November 2006

O R D E R

The petitioner is the fifth accused who faces indictment in a prosecution interalia under Section 324 read with 149 I.P.C. All the four co-accused have already been found not guilty and acquitted. The case against the petitioner alone survives. The petitioner has come to this court with the prayer that the powers under Section 482 Cr.P.C may be invoked to quash the proceedings against the petitioner. He raised his contentions on three specific aspects.

2. First of all, it is contended that the allegations against him are false and not sustainable. That contention cannot obviously be resolved in proceedings under Section 482 Cr.P.C. Secondly, he contends that accused 1 to 4 having been acquitted, charge against him under Section 149 I.P.C cannot be raised. The learned counsel for the accused fairly submits that in the light of the decision in Moosa vs. Sub Inspector of Police[2006(1) KLT 552] (FB), he is not canvassing the proposition that acquittal of the co-accused is ipso facto sufficient for quashing the proceedings against him. However, he submits that since the co-accused have been acquitted, substratum of the charge for the offence read with 149 I.P.C has failed and

therefore proceedings are liable to be quashed. The counsel relies on the decision in Central Bureau of Investigation vs. Akhilesh Singh [(2005)1 Supreme Court Cases 478].

3. I am of the opinion that it is for the petitioner to appear before the learned Magistrate and claim discharge on this ground. It is for the learned Magistrate to consider the said contentions and take appropriate decision on merits. Ordinarily and normally, such contentions must be raised before the learned Magistrate at the first instance and the learned Magistrate must take appropriate decision under Sections 239/240 Cr.P.C. I find no compelling reasons available in this case which can persuade this court to short circuit the procedure prescribed by the code and consider the said contentions to bring about a premature termination of the prosecution against the petitioner who has not been available for trial from 2001.

4. Thirdly, it is contended that the matter has been settled between the parties. The defacto complainant shall be willing to compound the offence. If such settlement is reached and the defacto complainant has compounded the offence, that again is the matter which should normally be raised before the learned Magistrate for appropriate orders.

5. I do not, in these circumstances, find any merit in the

prayer for invocation of the extraordinary inherent jurisdiction available to this court under Section 482 Cr.P.C. The challenge must in these circumstances fail.

6. The learned counsel for the petitioner submits that the petitioner is employed abroad and is unable to appear before the learned Magistrate. It is for him to appear before the learned Magistrate through counsel and apply for exemption. For composition of the offence or for hearing on the question of charge and taking a decision on that aspect, it is not necessary to insist on the personal appearance of the accused on all dates of postings. The petitioner's application for exemption, if any, shall also be considered by the learned Magistrate on merits.

7. This Criminal Miscellaneous case is hence dismissed with the above observations. I make it clear that dismissal of this Crl.M.C will not in any way fetter the rights of the petitioner to raise appropriate contentions and make appropriate request before the learned Magistrate.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006